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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

September 11, 1996

1212.011

**BY HAND**

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

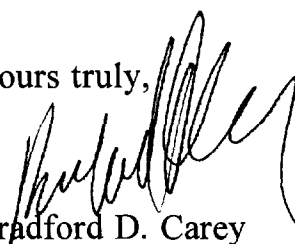
RE: In the Matter of Amendment of  
Section 73.3526(d) of the Commission's Rules  
RM-8855  
Comments of Hardy & Carey, L.L.P. in Support  
of Proposed Amendments

Dear Mr. Caton:

Enclosed please find the original and four (4) copies of Comments of Hardy & Carey, L.L.P. in Support of Proposed Amendments for filing with the Commission in connection with the above-captioned.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,



Bradford D. Carey

BDC/mv  
Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**SEP 11 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Amendment of Section 73.3526(b)  
of the Commission's Rules**

**RM-8855**

**MM Docket No. \_\_\_\_\_**

To: Chief,  
Policy & Rules Division

**Comments of  
Hardy & Carey, L.L.P.  
In Support  
of Proposed Amendments**

**September 10, 1996**

**Ashton R. Hardy  
Bradford D. Carey  
Hardy & Carey, L.L.P.  
111 Veterans Blvd.  
Suite 255  
Metairie, Louisiana 70005  
(504) 830-4646**

## **Discussion**

The undersigned, on behalf of its clients, hereby supports the petition of David Tillotson for the amendment of Section 73:3526 (b)(1) of the Commission's rules to remove the requirement that new broadcast station licensees are obligated to correct public file deficiencies<sup>1</sup> of the predecessor licensee when acquiring a station pursuant to Commission consent granted on FCC Form 314. The undersigned also urges the same amendment to Section 73:3526 (b)(2), which requires a similar public file reconstruction by successor licensees when the Commission consents to a transfer of control granted on FCC Form 315.<sup>2</sup> In addition to the reasons offered by the original petitioner, these proposed changes are further warranted in light of the recent relaxation of the Commission's ownership rules, which have sparked a flurry of station ownership changes. Given the current increase in and greater likelihood of future station ownership changes, the burden and expense of reconstructing a prior licensee's public file has been magnified and stands as an unnecessary obstacle in a newly competitive broadcast market.

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<sup>1</sup> We support the complete deletion of the requirement to correct any public file deficiencies. Alternatively, however, we urge the Commission to at least *discontinue* the requirement as it pertains to those documents that are almost impossible to reconstruct. In particular, documents not on file with the Commission but required to be in the public file, such as political file information, letters from the public, quarterly programming reports, and other documents the Commission has no knowledge of, should not remain the responsibility of the successor licensee under the rule. Accordingly, as an alternative, retention of a form of the rule to continue the public file "reconstruction" requirement only for documents that are readily available at the Commission might suffice.

<sup>2</sup> The proposed rule change should also apply to transfers of control granted by FCC Form 315 because the end result is the same as in the FCC Form 314 Assignment -- new legal ownership. We believe the original petitioner's concern (see fn 1, page 3) regarding legal continuity and relevancy to the public is more applicable to short-form transfers of control pursuant to FCC Form 316, where there is a *per se* continuity of interest.

Although the Commission's rules require a station owner to maintain complete public files, there is no rule or procedure in place to ensure public file records are accurate and complete upon transfer or assignment. When, in the context of a broadcast station sale or other transaction, the Commission consents to the assignment or transfer of control of a broadcast license, the focus is typically on the qualifications of the potential new station licensee. Accordingly, the condition of the current licensee's public file is not considered. Similarly, the potential new licensee does not focus on the completeness of the current licensee's public file. Typically, the new licensee's focus in either an assignment or transfer of control situation is on the proper operation of a station's physical components -- transmitter, broadcast equipment, etc. Thus, little attention is paid by either the Commission or the potential new licensee to the accuracy or completeness of public file records. Unless a station has recently been inspected and/or fined for public file deficiencies, the understandable assumption of the prospective new licensee and the Commission is that Commission-required records are accurate and complete.

Therefore, in the typical assignment or transfer of control transaction, public file deficiencies are often only discovered after a transaction is complete. By that time, the previous station licensee no longer falls under the jurisdiction of the Commission and no recourse can be had against that licensee for incomplete public file records. The new station licensee is then faced with one of two options -- complying with the Commission's rule which shifts responsibility for reconstructing such records to the new licensee, or taking appropriate legal action against the previous licensee to

remedy the deficiencies. Both options cost the new owner time and money. The first option is usually taken because it is the least time-consuming and expensive of the two choices. Nevertheless, depending on the nature of the public file deficiencies, the new licensee may incur substantial cost in reconstructing the records. That burden is partially passed on to the already overtaxed Commission staff, which must determine if the old records exist and access them regardless of location.

The likelihood of the above scenario materializing is in direct proportion to the frequency of station ownership changes. The Commission's recent relaxation of its ownership rules has directly correlated into a dramatic increase in the frequency of station ownership changes. Many more station sales and purchases are currently being contemplated and planned across the nation, with concurrent assignments and transfers of control of broadcast licenses. The greater frequency of ownership changes will consequently increase the likelihood that post-transaction public file deficiencies will be discovered and require remedying. The collective expense of such efforts is prohibitive in today's highly competitive broadcast market. New licensees, ready to move forward with station operations in order to remain competitive, will be strapped with the pointless task of reconstructing public file records. Some licensees may not yet have discovered the public file deficiencies. These licensees remain vulnerable to additional competitive liabilities in the form of FCC inspections and potential fines. The influx of dated public file information requests to the Commission staff will necessitate an unwarranted expenditure of valuable Commission time and effort -- all to merely reconstruct records for reconstruction sake.

Accordingly, the Commission should amend Section 73.3526 (b)(1) and (b)(2) of its rules to eliminate the requirement that new broadcast station owners who acquire their broadcast licenses pursuant to Commission consent granted on FCC Forms 314 or 315 are obligated to obtain copies of necessary documents from before the assignment or transfer which were the responsibility of the previous licensee.

Respectfully Submitted,



Ashton R. Hardy  
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(504) 830-4646

September 10, 1996

**CERTIFICATE OF SERVICE**

I, Mary Vance, a secretary in the law firm of Hardy & Carey, L.L.P., do hereby certify that a copy of the above and foregoing Comments of Hardy & Carey, L.L.P. in Support of Proposed Amendments has been served on the following by mailing a copy of same via U.S. Mail, postage prepaid, this 10th day of September 1996, addressed as follows:

David Tillotson  
3421 M Street, N.W.  
Suite 1739  
Washington, DC 20007

Lynn Remly \*  
Chief, Policy and Rules Division  
Federal Communications Commission  
2000 M Street, Room 480  
Washington, DC 20554

  
\_\_\_\_\_  
Mary Vance

\*By Hand